

11/30/93

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of)	
)	
Estee Battery Company,)	Docket No. EPCRA-09-91-0014
(Commerce, CA Facility),)	
)	
Respondent)	

ORDER GRANTING MOTION
TO WITHDRAW COMPLAINT WITHOUT PREJUDICE

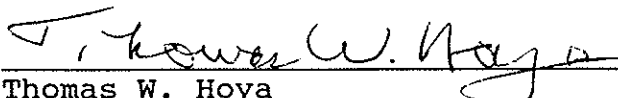
Complainant filed a Motion to Withdraw Complaint Without Prejudice Contingent upon No Further Action by Respondent. Complainant is granted a Withdrawal of the Complaint Without Prejudice.

Complainant's September 16, 1993 Motion stated that it had "determined that Respondent was out of business and no longer ... a viable entity." The Motion stated further that the parties had "negotiated a Consent Agreement and Final Order ('CA/FO')" imposing no civil penalty and requiring only Respondent's certification "that it had already corrected the violations alleged ... and that it was no longer a viable entity." But, according to the Motion, Respondent failed to send Complainant a signed CA/FO, and Complainant has been unable to communicate with Respondent's attorney despite repeated attempts.

It was on the basis of these facts that Complainant filed its Motion. As set forth therein, "Complainant moves to withdraw the

Complaint without prejudice, contingent upon Respondent taking no further action concerning this case, including but not limited to the filing of a suit for attorney's fees or other costs." The Motion added: "Complainant asks that the Court include in its Order a provision authorizing the Complainant to re-file the Complaint if Respondent files any further action in this case." Respondent filed no response to Complainant's Motion.

Complainant is entitled to a withdrawal of the Complaint without prejudice, and such absence of prejudice is unlimited by any restriction, such as the contingency suggested by Complainant. In view of the record of this case, Complainant should be free to refile the Complaint without prejudice, rather than authorized to refile it again only upon the occurrence of the contingency that it postulated. (See generally 9 Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure: Civil §2373 (1971).) Accordingly, as set forth above, Complainant's Motion is granted for withdrawal of the Complaint without prejudice.


Thomas W. Hoya
Administrative Law Judge

Dated: November 30, 1995

In the Matter of Estee Battery Company (Commerce, CA Facility,
Respondent
Docket No. EPCRA-09-91-0014

Certificate of Service

I certify that the foregoing **Order Granting Motion to Withdraw Complaint Without Prejudice**, dated November 30, 1993 was sent this day in the following manner to the addressees listed below.

Original by Regular Mail to:

Steven Armsey
Regional Hearing Clerk
U.S. EPA
75 Hawthorne Street
San Francisco, CA 94105

Copy by Regular Mail to:

Counsel for Complainant:

David McFadden, Esquire
Assistant Regional Counsel
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Counsel for Respondent:

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Los Angeles, CA 90067



Maria Whiting
Legal Staff Assistant

Dated: November 30, 1993